IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.933 (MS) OF 2006

Bhuwan Chandra Pandey,
S/o late Sri Hira Ballabh Pandey,
Tallital, Bhimital, District-Nainital. .....Petitioner.

Versus

1. Payment of Wages Authority and Assistant Labour Commissioner, Kumaun Region, Haldwani, District-Nainital.
2. Executive Engineer, Tarai Sinchai Khand, Nainital.
3. Junior Engineer, Sinchai Department, Bhimital, Nainital.
4. Jagdish Chandra Joshi & 15 others, R/o Tallital, Bhimital, District Nainital.
5. Chief Judicial Magistrate, Nainital. .....Respondents

Hon'ble Rajesh Tandon, J.

Heard Sri Gopal Narain, Sr. Advocate for the petitioner, Standing Counsel for the respondents no. 1 to 3 and 5 and Sri Anil Kumar Joshi, Advocate for the respondent no.4.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the notice dated 10.01.2006, by which the demand of Rs. 67,720/- has been made.

3. The grievance of the petitioner is that recovery proceedings have been initiated in pursuance of the order dated 08.09.2003, which was passed under Payment of Wages Act on a review petition filed by the petitioner. A perusal of the

order dated 15.02.2003 shows that the liability under Payment of Wages act has been calculated to the extent of Rs. 62,720/-. Thereafter, the petitioner has filed a review petition and the order was passed to the extent that liability under Payment of Wages act should be extended to the Executive Engineer and Junior Engineer along with the petitioner.

4. Section 3 of the Payment of Wages act provides responsibility for payment of wages It reads as under:

> *"Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act.*
>
> *Provided that, in the case of persons employed (otherwise than by a contractor)-*
>
> *(a) in factories, if a person has been named as the manager of the factory under clause (f) of sub section (1) of section 7 of ht factories act, 1948 (63 of 1948).*
>
> *(b) in industrial or other establishment, if there is a person responsible to the employer for the supervision and control of the industrial or other establishment;*
>
> *(c) upon railways (otherwise than in factories) if the employer is the railway administration and the railways administration as nominated a person in this behalf for the local area concerned,*
>
> *The person so name, the person so responsible to the employer, or the person so nominated as the case may be, shall also be responsible for such payment."*

5. The counsel for the petitioner has submitted that the order passed on the review petition dated 8.9.2003 has become final, therefore, the Chief Judicial Magistrate has no jurisdiction to issue recovery notice against the petitioner.

6. In view of the above, liberty is given to the petitioner to file an objection before the authority concerned stating his grievances with regard to liability to pay the amount.

7. The amount deposited by the petitioner shall remain in deposit till the objection of the petitioner is disposed of.

8. Subject to the aforesaid, writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

23.08.2006
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